Decision must be governed by relevant provisions of the Bankruptcy Act. The definition found in Section 1 (23)[4] is:

"'Secured creditor' shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets."

Section 57 (e)[5] directs that "Claims of secured creditors . . . shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities . . ."

Unless the petitioner was a secured creditor as defined by Section 1 (23) it was not bound to have its security or the avails thereof valued and to prove only for the difference between that value and the face amount of the debt. Petitioner does not come within the definition, for at the date of bankruptcy it held no security against the bankrupt company's property, nor security given by any other person who in turn was secured by the bankrupt's assets.[6] Sections 1 (23) and 57 (e) do not, therefore, forbid the proof of a claim for the principal of the bond with interest, though the petitioner may not collect and retain dividends which with the sum realized from the foreclosure will more than make up that amount. The court below was of this opinion, but thought that Section 68 (a)[7] forbade proof of a claim for more than the balance of the debt after application of the avails of the foreclosure. That section directs, "In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid." The theory upon which this section was held to control the right to prove was thus stated:

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[4] U. S. C. Tit. 11, §§ 1 (23).

[5] U. S. C. Tit. 11, § 93 (e).

[6] The point was involved and necessarily decided, though not adverted to, in *Hiscock* v. *Varick Bank*, 206 U. S. 28; see the same case below *sub nom. In re Mertens*, 144 Fed. 818, 820. See also *In re Headley*, 97 Fed. 765; *Swarts* v. *Fourth Natl. Bank*, 117 Fed. 1; *In re Noyes Bros.*, 127 Fed. 286; *In re Sweetser*, 128 Fed. 165; *Gorman* v. *Wright*, 136 Fed. 164; *Board of County Commissioners* v. *Hurley*, 169 Fed. 92; *In re Bailey*, 176 Fed. 990; *In re Keep Shirt Co.*, 200 Fed. 80; *In re Thompson*, 208 Fed. 207; *Young* v. *Gordon*, 219 Fed. 168; *In re Pan-American Match Co.*, 242 Fed. 995; *In re Anderson*, 11 F. (2d) 380; *Hampel* v. *Minkwitz*, 18 F. (2d) 3; *Bankers Trust Co.* v. *Irving Trust Co.*, 73 F. (2d) 296.

[7] U. S. C. Tit. 11, § 108 (a).

"While the obligation of the bankrupt to pay the mortgage still remained, the mortgagee had gotten possession of the security, and, in enforcing this obligation against the bankrupt, the appellant-creditor [petitioner] must reduce its claim by the admitted value of the security less the $100 paid for it. The bankrupt owed the appellant [petitioner] the amount of the mortgage, and the appellant [petitioner] equitably owed the bankrupt the value of the security in his possession."

This novel application of Section 68 (a) is, we think, inadmissible. A creditor holding security who realizes upon it, does not "owe" his debtor the amount realized. The well understood concept of mutual debts does not embrace such a situation as is here disclosed.

*Judgment reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*